



FINAL REPORT AND RECOMMENDATIONS OF THE MISSOURI EMINENT DOMAIN TASK FORCE

**Presented to
Governor Matt Blunt**

**State of Missouri
Jefferson City
December 30, 2005**

December 30, 2005

MEMORANDUM

TO: Governor Matt Blunt

RE: Final Report and Recommendations of the Missouri Eminent Domain Task Force

By Executive Order 05-15, you established the Missouri Eminent Domain Task Force to study the use of eminent domain in Missouri. You directed the Task Force to provide its final recommendations to you by December 31, 2005. The Task Force is pleased to offer this final report for your consideration. This report offers the Task Force's recommendations for changes and improvements in the exercise of the power of eminent domain in Missouri.

I would like to commend my fellow members of the Task Force for their time and dedication to this important work. As you will see in this report, the Task Force held ten public meetings and considered a wide range of issues relating to eminent domain. This report will reflect that the Task Force took a comprehensive and deliberate approach in addressing eminent domain. This process has resulted in eighteen recommendations that address both the scope of eminent domain as well as the procedures and process required for eminent domain.

It has been a privilege for us to serve on the Missouri Eminent Domain Task Force. We hope that our work will lead to meaningful improvements in the way that eminent domain is used in Missouri. Please let us know if we may provide any additional assistance or information.

Sincerely,

A handwritten signature in black ink, reading "Terry M. Jarrett". The signature is written in a cursive, flowing style.

Terry M. Jarrett
Chair

MISSOURI EMINENT DOMAIN TASK FORCE
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Sherry Fisher
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MEETING DATES
2005

August 4

August 18

September 1

September 15

September 29

October 13

November 3

November 10

December 1

December 7

EXECUTIVE SUMMARY

In his Executive Order, Governor Blunt charged the Task Force with the following responsibilities:

- To study the use of eminent domain, especially when the proposed public use of the property being acquired by eminent domain is not directly owned or primarily used by the general public.
- To analyze current state and federal laws governing eminent domain and recommend any changes that would enhance the effectiveness of these laws.
- To develop a definition of “public use” that allows state and local governments to use eminent domain when there is a clear and direct public purpose while at the same time ensuring that individual property rights are preserved.
- To develop criteria to be applied by state and local governments when the use of eminent domain is being proposed; and
- To recommend specific eminent domain legislation for possible consideration by the Missouri General Assembly.

In carrying out these responsibilities, the Task Force provided substantial opportunity for the public to provide input and testimony. The Task Force created a web site (<http://www.mo.gov/mo/eminentdomain/index.htm>) to provide information to the public about the work of the Task Force. The web site provided the public the opportunity to send comments via email to the Task Force. The web site received 374 comments.

Furthermore, the Task Force’s August 18, 2005 hearing was devoted entirely to public testimony. Fifty witnesses provided testimony. A transcript of the testimony was prepared and made available on the Task Force’s web site.

As noted above, the Task Force held ten public meetings. The Task Force’s goal was to be thorough, deliberate, and produce a final product that provided comprehensive information as well as good recommendations for curbing the abuse that has occurred with the use of eminent domain in Missouri.

The Task Force recommendations can be broken down into three categories:

1. Redefining the scope of eminent domain;
2. Improving the procedure and process required for exercising eminent domain; and
3. Providing penalties for condemning authorities that abuse the eminent domain process.

The Task Force’s eighteen recommendations are set out individually in this final report and in the following format: Statement; Discussion; and Action Step.

REDEFINING THE SCOPE OF EMINENT DOMAIN

Redefining the scope of eminent domain includes changes to the authorized uses of eminent domain and changes to the laws governing which entities may exercise it. Briefly, the Action Steps that fall under this category include:

- Defining “public use” to provide that the public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, standing alone, shall not constitute a public use;
- Recommending that in redevelopment situations, the power to exercise eminent domain be taken out of the hands of private developers and given to government agencies whose officials are elected or appointed and accountable to the people;
- Prohibiting the acquisition of farm land through the use of eminent domain for economic development;
- Recommending that the definition of blight be tightened to include additional factors, above and beyond the factors listed in the current definition of blight, before land can be blighted for eminent domain;
- Providing meaningful and independent judicial review of legislative designations of blight; and
- Limiting to five years the authorization to acquire land which has been blighted.

IMPROVING THE PROCEDURE AND PROCESS REQUIRED FOR EXERCISING EMINENT DOMAIN

Improving the way eminent domain is exercised includes changes in the condemnation process and taking steps to make sure the process is fair as well as changing the compensation structure. Recommendations under this category include:

- Providing earlier and better notice to landowners when there is a possibility that their property may be acquired through eminent domain;
- Requiring condemning authorities to present to the landowner a “Landowners Bill of Rights” at the beginning of the process so that landowners are apprised of their rights under the law;
- Requiring condemning authorities to negotiate in good faith;
- Requiring condemning authorities to make a final written offer that shall remain open for 30 days before a condemnation action can be filed in court;
- Requiring condemning authorities to offer third party mediation to a landowner before a condemnation action can be filed in court;
- Requiring the courts to make sure that the commissioners they appoint are qualified to determine the value of property;
- Requiring that commissioners be given uniform instructions;
- Requiring commissioners to hold an informal hearing to allow both parties an opportunity to be heard and present evidence on the value of land;

- Focusing on making the landowner whole in determining just compensation by allowing additional factors to be considered beyond just the fair market value of the land;
- Adopting the provisions of the Federal Uniform Relocation and Real Property Acquisition Policies Act of 1970;
- Requiring entities with eminent domain authority to give full consideration to alternate routes/sites proposed by landowners;
- Creating a process whereby a landowner can reacquire his or her interest in the property, or receive additional compensation, if there is a change in use or ownership of the property acquired by an entity with eminent domain authority;
- Creating the office of ombudsman in state government to assist citizens by providing free consultations to help them understand the eminent domain process.

PROVIDING PENALTIES FOR CONDEMNING AUTHORITIES THAT ABUSE THE EMINENT DOMAIN PROCESS

In the past, condemning authorities have been able to abuse the process without fear of penalty or reprisal. Recommendations in this category include:

- Allowing landowners to recover their costs and expenses when the condemning authority abandons a condemnation proceeding; and
- Giving courts the discretion to penalize a condemning authority if it is determined to the satisfaction of the courts that a condemning authority acted in bad faith.

ACTION

ITEMS

#1

Statement: All landowners likely to be affected by a project involving the acquisition of property or easements by an entity with eminent domain authority should be directly and concurrently notified early in the process.

Discussion: Affected landowners should have the opportunity to be heard before property or easements are acquired for public uses that may involve condemnation of their property. Information about the project should be made available for this purpose.

Action Step: The General Assembly should enact legislation to include provisions requiring direct and concurrent written notice by a condemning authority, before initiating negotiations for acquisition, to all parties likely to be approached for property or easement acquisition. Such notice should include general descriptions of the following: property or easements proposed for acquisition, purpose of proposed acquisition, and hearing and appeal process.

2

Statement: When entities with eminent domain authority enter into negotiations with landowners, they should inform landowners of their legal rights and how the property/easement acquisition/condemnation process works.

Discussion: The Task Force heard testimony that in many instances landowners are unsure of their rights in the condemnation process. A “Landowner Bill of Rights” should be given to landowners at the beginning of the process so that landowners are advised of their rights under the law. Condemnation of property can seem complicated and mysterious to property owners. Uncertainty about the process creates fear in a situation which is already difficult. A clear statement of the acquisition process should be provided prior to or at the outset of negotiations to acquire property to help the property owner better understand the process. A pamphlet similar to the one used by MoDOT explaining the process should be given to the property owner by the acquiring authority.

Action Step: The General Assembly should enact legislation to require any entity with condemning authority to provide to the landowner, at the onset of initial negotiations for acquiring property, a written summary of the rights of a landowner whose property may be acquired through condemnation, as well as a summary of the process.

3

Statement: The condemning authority should negotiate in good faith. The court must be satisfied that good faith negotiations have occurred.

Discussion: Prior to entering an Order of Condemnation, the judge should be satisfied that good faith negotiations have occurred. Current law is only that an offer be made. Factors should be required to show good faith negotiations. These factors should include, at a minimum, the following: (1) proper and timely notice to the landowner; (2) initial offer no lower than fair market value based on an appraisal by a certified appraiser; (3) provide opportunity for landowner to obtain his/her own appraisal from a certified appraiser of his choice which shall be part of the record, at condemning authority's reasonable expense; and (4) offer of mediation from the condemning authority to the landowner prior to condemnation. If any party wants to get an appraiser who is not certified, they should pay for that appraiser at their own expense.

Action Step: The General Assembly should enact legislation to add the foregoing minimum requirements that a condemning authority must show in order to prove good faith negotiations as described above before a court will enter an order approving condemnation.

4

Statement: Before a condemnation petition is filed, condemning authorities should make a final written offer to the landowner and the landowner should have a period of time to consider the offer.

Discussion: The landowner should have a period of time to consider an offer before the condemnation action is filed. The offer should be in writing.

Action Step: The General Assembly should enact legislation to include provisions requiring a condemning authority to make a written offer at least 30 days before filing a condemnation petition, which offer shall remain open for said 30 days.

5

Statement: Prior to instituting condemnation proceedings the condemning authority should be required to provide an opportunity to the property owner to mediate.

Discussion: The current process to acquire property can seem to be adversarial. The opportunity to obtain the help of a neutral third party to mediate has proven to be very effective. Mediation when used has resulted in substantially fewer cases being filed in court. Successful mediation is a win/win and should be made available by the acquiring authority to the property owner as an option. Safeguards should be included to prevent the use of this step as a delaying tactic. Condemnation of property is very expensive and should be used only as the last resort. Based on the success rate of government agencies that currently use mediation prior to filing condemnation there are significant benefits and savings which offset some or all of the cost of mediation. Property appraisal should be done before mediation.

Action Step: The General Assembly should enact legislation to require the condemning authority to provide an opportunity to the property owner to mediate. Safeguards should be put into place so that the mediation process does not prolong the condemnation process.

6

Statement: Commissioners who are appointed by the Circuit Court to appraise the property should be impartial and qualified to establish the value of property. Commissioners should be given uniform instructions on how to determine the value of the property. Commissioners should hold an informal hearing to allow all parties the opportunity to be heard and present evidence on the value of the property.

Discussion: The one function that Commissioners serve is to determine the value of the property which is being acquired through condemnation. Persons who are appointed to serve as Commissioners should have knowledge based on their experience to determine the value of property. Citizens have expressed concern about Commissioners who appear to be unqualified or biased. Appointment of an employee, agent or relative of the condemnor or condemnee creates a sense of unfairness and should be prohibited. It is generally recognized that many persons are qualified to determine land values depending on their experience; therefore, the proposal does not specify who is qualified other than requiring the Circuit Court to appoint Commissioners who are unbiased to either party and who are knowledgeable about land values. The only statutory requirement now is that the Commissioners view the property.

Action Step: The General Assembly should enact legislation requiring that Commissioners who are appointed by the Circuit Court to determine the value of property should be impartial and are reasonably qualified to determine land values. Further, Commissioners should be given uniform instructions by the Circuit Court prior to viewing the property as to how they are to determine its value. The General Assembly should consider using the Missouri Bar Eminent Domain Law Committee's suggested instructions as a starting point. Finally, the legislation should require an informal hearing so that all parties have the opportunity to be heard and present evidence before a Commissioner's award is made.

7

Statement: Just compensation should be based, at a minimum, on fair market value, defined as the price a willing seller under no obligation to sell would sell to a buyer under no obligation to buy. Among other considerations, heritage value, relocation and replacement costs as proposed in Item #8 should factor into the consideration for just compensation.

Discussion: In determining just compensation, the focus should be on making the landowner whole. In many situations, fair market value is inadequate. Depending on the circumstances, other factors, such as heritage value, relocation costs and replacement costs as proposed in Item #8, may be relevant in order to adequately compensate the landowner.

Some members of the Task Force stated that future lost profits, and anticipated future profits associated with the acquisition accruing to the buyer, should be valid factors to consider in making the landowner whole. However, these factors are not included in the Task Force's final action item.

Some other members of the Task Force felt that the Task Force should provide some guidelines on the definition of heritage value and stated that they could not support inclusion of heritage value as a part of just compensation unless the term is narrowly defined to apply to properties like Century Farms or similar properties.

Also, Task Force members acknowledged concerns relative to a landowner's potential tax liability arising from the sale of property in an eminent domain proceeding. However, due to uncertainty about applicable federal and state tax provisions, no specific recommendations were made.

Action Step: The General Assembly should enact legislation that allows several factors to be considered in determining just compensation. These factors should include but not be limited to the following: fair market value, heritage value, highest and best use, and relocation and replacement costs as proposed in Item #8. Key factors that need defining, such as heritage value, should be defined in statute. The focus should be on making the landowner whole.

8

Statement: Missouri should adopt the provisions of the Federal Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended.

Discussion: Missouri law does not require the condemning authority to pay relocation costs in all instances. Most projects involving economic development do however require relocation payments. Relocation costs are intended to cover costs to the property owner which are not covered in the fair market value for the property such as moving expenses. Without payment of relocation costs the property owner is not fully compensated for costs the property owner incurs when his or her land is acquired. All political subdivisions, not just those getting federal funds, which propose to displace people through the use of eminent domain, should be required to follow the federal requirements.

Action Step: The General Assembly should enact legislation to establish a relocation policy equal or greater to the requirements of the Federal Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended.

9

Statement: Courts should have the discretion to penalize a condemning authority if it is determined to the satisfaction of the courts that a condemning authority acted in bad faith.

Discussion: Current law provides that a court must find that there have been good faith negotiations before the court will enter an order approving the condemnation. There is currently no provision to penalize bad faith conduct after such an order is entered. Allowing a court to sanction bad faith conduct will help ensure that condemning authorities will continue to act in good faith throughout the process.

Action Step: The General Assembly should enact legislation providing that if a condemning authority acts in bad faith, the judge can, in his or her discretion, impose additional costs, such as attorney fees and expenses or punitive damages.

10

Statement: Only government agencies whose officials are elected or who are directly responsible to elected officials should have the power of eminent domain.

Discussion: When allowing government to take a person's property, that body needs to be accountable and transparent to the public in the highest degree. The counter would be that progress would slow to the whims of the people due to their influence over elected officials. Over hundreds of years this country has found the perfect median in a representative republic. New York and Missouri are the only two states that allow developers to act as the condemning authority.

Over a number of years the General Assembly has granted to many agencies including private entities the power of eminent domain. Many of the agencies that have this power are special districts with the power limited to the specific purpose for which the district is organized. Testimony by citizens and experts before the Task Force did not identify any significant problem in this area. If agencies do not need the power of eminent domain it may make sense to eliminate the authority or consolidate the authority with another agency directly responsible to the voters. For example, section 353.110 RSMo., provides that a municipality can delegate its authority to acquire land directly to an Urban Redevelopment Corporation. Elimination of the authority to delegate the power of eminent domain to an Urban Redevelopment Corporation would not work serious harm on the overall economic goals of Chapter 353, Urban Redevelopment, and could lessen citizen concern about delegation of this power to what appears to be a private corporation. It should be made clear that we cannot delegate power of eminent domain to private development entities.

In addition, a majority of the Task Force felt that the General Assembly should consider whether this limitation should also apply to private common carriers such as utilities and railroads. In the utility context, there was some discussion that the Public Service Commission should have the power of eminent domain rather than the utilities themselves.

Action Step: The General Assembly should enact legislation providing that the power of eminent domain shall only be vested in a government agency whose officials are elected or who are appointed by elected officials. This legislation should be limited to the use of eminent domain pursuant to Chapter 353, RSMo., (Urban Redevelopment Corporation) and to any other private development entities.

11

Statement: Entities with eminent domain authority should give full consideration to alternate routes/sites proposed by landowners.

Discussion: There is no statutory recognition that condemning authorities consider alternate routes or sites proposed by the landowner. Statutory recognition that alternate routes or sites are a legitimate consideration would encourage condemning authorities to work with landowners to find the least disruptive route or site.

Action Step: The General Assembly should enact legislation requiring that a condemning authority shall realistically and logically consider reasonable alternate routes/sites which are proposed by landowners.

#12

Statement: Easements acquired by an entity with eminent domain authority but not used for the purpose for which they were acquired or by the entity that acquired them should revert to the current owner of the underlying property. The transfer or sale of property acquired by an entity with eminent domain authority should be restricted.

Discussion: If a condemning entity no longer desires to use property or easements for the public use for which such property or easements were acquired, then any subsequent proposed acquisition of such easements or property for other public uses or by other condemning entities should be negotiated on its own merits.

Some members of the Task Force felt that the window of time in (2)(a) below should reflect that many projects take years to complete just the land acquisition. They feel a more appropriate window of time for a landowner to reacquire the property would be ten years after the last land acquisition is completed for the project and not longer than twenty-five years. Some members also felt that in determining what is a different purpose or use, the transfers of highway or street right-of-way between governmental agencies should be one of the exceptions.

Some members of the Task Force felt that any restrictions on the right of a condemning authority to use, transfer or sell a property interest should be very narrow and limited and in particular should not apply when the property interest was acquired by negotiation as opposed to actual exercise of the power of eminent domain.

Action Step: The General Assembly should enact legislation that would: (1) establish a civil cause of action for the vacation of utility easements so that easements which are (a) no longer used for the purpose for which they were acquired or by the entity that acquired them would revert to the current owner of the underlying property, or (b) not used for a period of ten years after acquisition would revert to the current owner of the underlying property, unless the landowner waives the reversion; and (2) restrict the transfer or sale of property acquired by an entity with eminent domain authority by establishing a civil cause of action whereby (a) a landowner could reacquire the property if it is not used for the purpose for which it was acquired within a specified period of time (such as no sooner than five years but no later than twenty years after the condemning authority acquires the property interest), and (b) before an easement acquired by an entity with eminent domain authority could be sold or transferred to another entity, the owner of the underlying property would be notified of the planned transaction, and such owner would have a civil cause of action to collect additional compensation if that owner could demonstrate additional damages and other adverse impacts associated with the change in use or ownership. In determining what is a different purpose or use, exceptions should be made for situations in which mergers or similar transactions result in a change in the identity of the condemning entity, or redesignation of a service area results in a change in service provider, and these or similar transactions do not change the use of property or easements.

13

Statement: Missouri law should define “public use” as that term applies to eminent domain.

Discussion: In his Executive Order, the Governor directed this Task Force to “develop a definition of ‘public use’ that allows state and local governments to use eminent domain when there is a clear and direct public purpose while at the same time ensuring that individual property rights are preserved.”

The Task Force debated this issue extensively and agreed on the following proposed language for the definition of public use in Missouri:

“Notwithstanding any other provision of law to the contrary, neither this state nor any political subdivision thereof nor any other condemning entity shall use eminent domain unless it is necessary for a public use. The term ‘public use’ shall only mean the possession, occupation, and enjoyment of the land by the general public, or by public agencies; or the use of land for the creation or functioning of public utilities or common carriers; or the acquisition of abandoned or blighted property.

The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, standing alone, shall not constitute a public use.”

The intent of this definition is that: (1) transfers to private entities are prohibited except in limited, clearly defined situations, such as public utilities or common carriers, blighted or abandoned property; and (2) the public benefits of economic development do not constitute a public use.

While the action step recommends that this definition be enacted by statute, some members of the Task Force believe that a constitutional amendment should be considered, both to preserve this concept in the Constitution and to give the people an opportunity to vote on the issue.

Action Step: The General Assembly should enact legislation defining “public use” for purposes of eminent domain substantially as set out in the discussion above, or develop a definition that includes the essential concepts identified above.

14

Statement: The authorization to acquire land which has been blighted should be limited to five years.

Discussion: Property owners have complained about waiting for years for their property to be acquired. Developers have also stated to the Task Force that they believe reasonable time limits on the length of time to acquire the property are appropriate. Therefore, if the condemnation petition has not been filed within five years after the project has been authorized, the authority to acquire the property should expire. Future acquisition after expiration of the five years could only occur if the project is reauthorized.

Action Step: The General Assembly should enact legislation to limit to five years the time to acquire, through the use of eminent domain, land which has been blighted. Enact a sunset provision on developer rights to eminent domain over a redevelopment area. Requests to extend can be made every five years. The time limit should be five years mimicking the existing language in the TIF statutes.

15

Statement: The acquisition of farm land through the use of eminent domain for economic development should be prohibited.

Discussion: Missouri law currently prohibits the use of eminent domain to acquire land for economic development purposes when the property is not blighted. Generally, farm land is located outside of the urban area although it may be located at the urban fringe. The traditional use of blight was intended to deal with the problems of urban decay in the core of the city or in urban areas which are generally fully built out. The blighting of farm land seems counter intuitive and falls outside of the historic purpose for which blighting was developed. There is no compelling reason why an economic development tool intended to help with the redevelopment of urban areas should be used to acquire farm land which should be defined to include land assessed by the assessor as farm land. Farm land should be defined as set forth in Section 137.016(2), RSMo, except that it should include forest croplands.

Action Step: The General Assembly should enact legislation to prohibit the acquisition of farm land through the process of eminent domain for economic development purposes. The acquisition of farmland for highway right of way associated with economic development purposes through the use of eminent domain should be reviewed.

16

Statement: Condemning authorities should have to satisfy additional factors in order to designate an area blighted for purposes of eminent domain. There should also be an appeals process to the courts, where such a blight designation would be reviewed *de novo*.

Discussion:

The Task Force debated extensively the issue of blight. It was noted that the current definition of blight has been abused by condemning authorities by making determinations of blight in areas where no reasonable person would find blight. Furthermore, currently courts give almost total deference to the condemning authority's designation of blight, resulting in no meaningful judicial review. In debating this issue, the Task Force was very mindful of the overlap of blight for eminent domain with the Tax Increment Financing (TIF) statutes. The consensus of the Task Force is that a complete overhaul of the blight definition is not obtainable and that other reforms could be just as effective in curbing the abuse of blight. The Task Force believes that reforms are necessary and that condemning authorities should have to meet a higher standard if they want to blight an area for condemnation purposes. Therefore, the Task Force recommends that the definition of blight should be tightened so that condemning authorities have to make some additional determinations, above and beyond the factors listed in the current definition of blight, before land can be blighted for eminent domain. These additional factors should be defined in the legislation. To the extent possible, the additional factors should be objective and quantifiable, rather than subjective.

Additionally, the blight definition for eminent domain should state that a different use of a specific piece of property or properties which would provide a higher level of tax revenue or economic viability or that the land is economically underutilized shall not be a valid factor in determining blight.

Finally, the Task Force agrees that there should be an appeals process where either a condemning authority or a landowner can file a declaratory judgment in the circuit court of the county where the property is located to obtain judicial review. The standard of review should be changed from the current standard to a *de novo* standard, which means that the courts would independently review the determination.

Some members of the Task Force believe that some intermediate standard of review, rather than *de novo*, is more appropriate. However the consensus of the Task Force is that the current standard of review is inadequate.

Action Step: The General Assembly should enact legislation adding to the definition of “blighted area” for eminent domain purposes additional factors that a condemning authority must establish before it can designate a blighted area for eminent domain purposes. This legislation should also reflect that a different use of the land which would provide a higher level of tax revenue or economic viability or that the land is economically underutilized shall not be a valid factor in determining blight. In addition, the General Assembly should enact legislation providing for an appeals process where either a condemning authority or a landowner can file a declaratory judgment action in the circuit court of the county where the property is located to obtain judicial review of the condemning authority’s designation of blight, with a *de novo* standard of review. The legislation should require that the case is expedited, similar to elections cases.

17

Statement: Property owners should be allowed to recover their costs and expenses when the condemning authority abandons a condemnation proceeding.

Discussion: Condemning authorities have the authority to abandon condemnation proceedings at any time prior to a final judgment. Currently, when private condemnors abandon condemnation proceedings, they are responsible for attorneys' fees or costs associated with the defense of the condemnation action. When non-private entities abandon, all that is permitted is six percent of the Commissioners' award from the date of the award until the date of abandonment. There is no compensation if the abandonment occurs prior to the Commissioners' award. This would be in lieu of the six percent provision.

Action Item: The General Assembly should enact legislation to allow property owners to recover six percent of the Commissioners' award, or the attorneys' fees and expenses, whichever is greater, in connection with the defense of condemnation actions which are abandoned or dismissed at any time after the filing of the petition.

#18

Statement: The State could help assure a fair process for eminent domain by creating an office of ombudsman to assist citizens.

Discussion: The Task Force heard testimony that often, when faced with the threat of eminent domain, citizens have no resource to learn about the condemnation process and procedures without hiring an attorney. The State could create an office of ombudsman, an official of state government, who could assist citizens by providing free consultations and help them understand the eminent domain process. A state agency could appoint a current state employee to the position, thus saving the expense of adding an additional employee. The Department of Economic Development or the Department of Agriculture would be logical choices to house the ombudsman.

Action Step: The General Assembly should explore creating the office of ombudsman, an official of state government, who can assist citizens by providing free consultations and helps them understand the eminent domain process.

APPENDIX

EXECUTIVE ORDER

05-15

WHEREAS, on June 23, 2005, the United States Supreme Court issued its decision in *Kelo v. City of New London*, which deals with eminent domain and the government's right to use eminent domain to acquire private property for public use; and

WHEREAS, the Court's decision greatly expands the right of government to seize private property—a home, farm, or small business—and give it to other private persons or entities just because they can generate greater tax and other revenues, and

WHEREAS, both the United States and Missouri Constitutions provide that no private property shall be taken for public use without just compensation; and

WHEREAS, in its decision the Court expressly provides that nothing in the decision precludes any State from placing further restrictions on the exercise of eminent domain; and

WHEREAS, it is in the public interest to determine the appropriate use by government of eminent domain to allow the taking of private property when there is a clear and direct public purpose, while at the same time protecting individual property rights.

NOW THEREFORE, I, Matt Blunt, Governor of Missouri, by virtue and authority vested in me by the Constitution and laws of the State of Missouri, do hereby create and establish the Missouri Task Force on Eminent Domain.

The Task Force shall consist of nine (9) members appointed by the Governor. The Governor's General Counsel shall serve as Chair. All members shall serve at the pleasure of the Governor.

Members of the Task Force shall receive no compensation for their service to the people of Missouri but may seek reimbursement for their reasonable and necessary expenses incurred as members of the Task Force, in accordance with the rules and regulations of the Office of Administration, to the extent that funds are available for such purpose.

The Task Force is assigned for administrative purposes to the Missouri Department of Agriculture and the Missouri Department of Economic Development. The Directors of the Missouri Department of Agriculture and the Missouri Department of Economic Development shall be available to assist the Task Force as necessary, and shall provide the Task Force with any staff assistance the Task Force may require from time to time.

The Task Force shall meet at the call of its Chair, and the Chair shall call the first meeting of the Task Force as soon as possible.

The Task Force shall evaluate and make initial recommendations to me by October 1, 2005 on the following topics:

- Study the use of eminent domain, especially when the proposed public use of the property being acquired by eminent domain is not directly owned or primarily used by the general public.
- Analyze current state and federal laws governing eminent domain and recommending any changes that would enhance the effectiveness of these laws.
- Develop a definition of “public use” that allows state and local governments to use eminent domain when there is a clear and direct public purpose while at the same time ensuring that individual property rights are preserved.
- Develop criteria to be applied by state and local governments when the use of eminent domain is being proposed.
- Recommend specific eminent domain legislation for possible consideration by the Missouri General Assembly.

The Task Force shall prepare a final report and submit it to me by December 31, 2005.

The Task Force shall expire on December 31, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 28th day of June, 2005.

Matt Blunt
Governor